DOCUMENT RESUME

ED 147 083 RC 010 219

TITLE Public Law 83-280 -- A Report Prepared by American Friends Service Committee.
INSTITUTION American Friends Service Committee, Seattle, Wash. Pacific Northwest Regional Office.
PUB DATE 77
NOTE 11p.

EDRS PRICE MF-$0.83 HC-$1.67 Plus Postage.
DESCRIPTORS *American Indians; Court Litigation; Criminal Law; *Federal Legislation; History; *Law Enforcement; *Legal Responsibility; *Reservations (Indian); *Self Determination; State Legislation; Synthesis; Tribes
IDENTIFIERS *Self Determination; *Tribal Sovereignty

ABSTRACT

Describing the "checkerboard" effect of legal jurisdiction over American Indians living on reservations currently operative under Federal, state, and local laws, this document presents a brief synthesis of the legislative history leading up to Public Law (PL) 83-280 and the Indian Self Determination Act of 1975 (PL 93-638). Specifically, this document addresses: early establishment of tribal sovereignty (the 1789 Northwest Ordinance, the 1834 Act of Congress, the case of Ex Parte Crow Dog, and the enabling acts of states) and the erosion of tribal sovereignty (1885 Major Crimes Act and the 1887 General Allotment Act); The Termination Act of 1953 and 1953 PL 83-280 (seen as an attempt by the U.S. government to end its responsibility to Indian peoples, since this law transferred civil and criminal law enforcement jurisdiction from the Federal government to the various states); the 1968 Indian Civil Rights Act (consent of tribes became mandatory for the assumption of further state jurisdiction); the 1975 Indian Self-Determination and Educational Assistance Act (recognized the right of tribes to manage their own affairs); the Indian Law Enforcement Act of 1975 (recent attempts to secure sovereignty based on the principle of local option repeal of PL 83-280); and Washington State under PL 33-280 (an illustration of the checkerboard effect of multiple jurisdiction). (JC)

****
* Documents acquired by ERIC include many informal unpublished *
* materials not available from other sources. ERIC makes every effort *
* to obtain the best copy available. Nevertheless, items of marginal *
* reproducibility are often encountered and this affects the quality *
* of the microfiche and hardcopy reproductions ERIC makes available *
* via the ERIC Document Reproduction Service (EDRS). EDRS is not *
* responsible for the quality of the original document. Reproductions *
* supplied by EDRS are the best that can be made from the original. *
****

ED147083

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

American Friends Service Committee, Seattle, WA

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC) AND USERS OF THE ERIC SYSTEM."

SCENARIO

You live in the United States. You have a home and twenty acres. Your grandparents left you this land which they had reserved for themselves when they gave away 20,000 acres to the state. They reserved it for themselves and their heirs in perpetuity... "For as long as the rivers run and the grass grows."

It is 1976 now and this is what it is like to live on this land left for your exclusive use.

ACTION

Someone enters your living room and steals your chair. You call the police. "Sorry," they say, "Your living room is not in our jurisdiction. Call the state police." (The state police are located 20 miles away.)

The state police arrive but by then the thief is gone. At that moment another person enters the house, this time the kitchen. This person takes your toaster. "Quick, police!" you cry, "Catch the thief". "Sorry," say the state police, "we have no jurisdiction over your kitchen, you will have to call the federal police."

The federal police arrive. "Oh dear," they say, "this person is a juvenile, the state has jurisdiction over juvenile delinquency, not us. You will have to get the state police back again." So saying the federal police depart. Meantime, a fight breaks out next door and the combatants come onto your land, you call the local police. The local police arrive. "Sorry," they say, "we have no jurisdiction over these people, they are non-family members. Yes, we have jurisdiction over your family, and this piece of land, but these people are not members of your family and we cannot arrest them."

Fiction? Fantasy? A fairy tale? Not if your home happens to be an Indian Reservation in a state that adopted...

PUBLIC LAW 83-280

Some Cases Under P.L. 280.

1. Bryan v. Itasca County, 44 L.W. 4832 (June 14, 1976).

The United States Supreme Court held that Public Law 83-280 does not give Itasca County, Minnesota, jurisdiction to impose personal property tax on a mobile home belonging to an enrolled Chippewa Indian, used as his permanent home and located within the Leech Lake Reservation on trust land.

2. Omaha Tribe of Indians v Peters, 44 L.W. 3746 (June 29, 1976).

By summary order the United States Supreme Court vacated the judgment of the Eighth Circuit Court of Appeals and remanded it for further consideration in light of **Bryan v. Itasca County** 426 U.S. (1976.)

Quileute Indian Tribe v. State of Washington. U.S.D.C., W.E. Washington, Civil No. C 74-7615.

Issue: Does Public Law 280 authorize the state of Washington to apply its sales, use, business, occupation and cigarette tax laws to the activities and property of plaintiff tribes and individual Indians within federally recognized reservations in situations where, absent Public Law 280, an immunity from taxation would exist.

4. United States v. State of Washington, U.S.D.C., E.D. Washington, Civil No. 3909.

Issue: Whether Public Law 280 gives the state of Washington the authority to impose its excise tax laws on transactions of tribally licensed retailers on the Yakima Reservation on their sales to Indians and non-Indians.

5. Confederated Tribes of the Colville Indian Reservation v. State of Washington

Issue: Whether Public Law 280 gives the state of Washington the authority to impose its excise tax laws on transactions of tribally licensed retailers on the Yakima Reservation on their sales to Indians and non-Indians.

6. Santa Rosa Band of Indians v. Kings County, U.S. Court of Appeals, Ninth Circuit, Civil No. 74-1565, decided November 3, 1975

Petition for rehearing was denied at some unspecified date. The case held that Public Law 83-280 does not make county ordinances applicable inside Indian Reservations, but only state laws of general application throughout the state.

7. Quinault v. Gallagher, 387 U.S. 907

In this case the Ninth Circuit Court of Appeals held that the question of whether Washington had complied with state law in assuming Indian jurisdiction was a state question which had been decided by the state Supreme Court in the **Paul** case and the **Makah** case.

8. Snohomish v. Seattle Disposal Co., 389 U.S. 1016. See 425 P. 2d 22.

This case turned on the state Supreme Court's saying that zoning by Snohomish County would constitute an "encumbrance" on trust lands in violation of federal. So the case really did not turn on Public Law 280. However, the question is now decided by **Santa Rosa v. Kings County**.

9. Kennerly v. District Court of the Ninth District of Montana. 404 U.S. 823. See 90 Cal. Rptr. 794.

In this case the tribal council of Blackfeet Reservation voted to give the state jurisdiction. The Supreme Court however held that such jurisdiction could not be assumed by the state without specific compliance with Public Law 83-280.

Erratum –

Page 1

Northwest Ordinance 1789

Note:
in 95th Congress (1977)
S 2010 will be re introduced
under different number but
still titled

INDIAN LAW ENFORCEMENT ACT

Each room in this fictional home represents a geographical and jurisdictional entity on an Indian reservation. Trust land, Fee Patent, individual Indian owned land, are under differing jurisdictional authority (Tribal, Federal, State and County). 'Checkerboard' jurisdiction causes great problems for tribal governments and tribal members. There is a crucial breakdown in law enforcement with agencies being unwilling to take responsibility and thereby creating a vacuum of authority. The tribes have indicated their willingness to fill this vacuum but are often denied the jurisdictional authority as a result of PL 83-280.

PUBLIC LAW 83-280

A REPORT PREPARED BY AMERICAN FRIENDS SERVICE COMMITTEE

TRIBAL SOVEREIGNTY... does it exist? If so, how much exists?

When the Europeans arrived in this country the sole governments that existed were obviously those of Indian tribes. This would mean that the Indian tribes at that time possessed SOVEREIGN JURISDICTION.

As the time passed the jurisdiction of the tribes was eroded by various U.S. Acts and treaties. The law confirmed however, that the Indian tribes still possessed rights and ownerships unique and sovereign.

As a result of Worcester v. Georgia (1832) the sovereign jurisdiction of Indian tribes was limited to "internal" as opposed to "external sovereignty", but the "internal sovereignty" was emphatically confirmed. (Internal: the right to govern members within boundaries. External matters, i.e., trade, was the responsibility of the federal government.)

In 1789 the Northwest Ordinance recognized the Possessory Title of the Indian tribes.

The 1834 Act of Congress confirmed that Indian land could only be obtained through treaties and conventions pursuant to the U.S. Constitution.

In the case of Ex Parte Crow Dog (1881) the U.S. Supreme Court held that only the Indian tribe had jurisdiction over tribal members on the reservation.

The Enabling Acts of States entering the Union often contained a clause that disclaimed jurisdiction over Indian lands within the State.

Treaties between the tribes and the United States invariably specified the land the Indian retained for themselves while they gave to the United States most of the land that they possessed. It is worthwhile noting that the reservation lands owned by the tribes today are only a small fraction of the land that once was theirs and that the reservation lands are not a gift from the United States but were reserved by the tribes for their **own exclusive** use. Hence the word "reservation" came from the fact that the Indians reserved lands rather than having been given them by the federal government.

EROSION OF TRIBAL SOVEREIGNTY or "If you can't steal power away...legislate it away."

In 1869 Congress authorized the President to settle tribes on reservations and "civilize" them.

1885 Major Crimes Act

After the Supreme Court ruling of **Ex Parte Crow Dog** the U.S. extended federal jurisdiction over crimes on Indian reservations to include Murder, Manslaughter, Rape, Assault with Intent to Kill, Arson, Burglary, Larceny. (These seven crimes have since been extended to thirteen). The results of the Major Crimes Act was to emasculate the authority of the tribal court system and the tribal government.

1887 The General Allotment Act

This Act authorized the alloting of the tribal lands to individual tribal members, the land to remain in trust for 25 years. Ostensibly the reason for allotment was that the tribal members would become self-supporting members of the community, i.e., farmers, a life occupation totally at odds with their historical ways of making a livelihood. The result was that after the twenty-five year trust period the land became eligible for state taxes. Too often the Indian owners were unaware of the taxes or unable to pay them, and land thus became available for sale to non-Indians. A direct result of the Allotment Act has been the loss to Indian tribes of over 17-1/2 million acres. (Giving up three quarters of the land mass of the United States was not enough; now a large portion of the remaining 1/2 fell into non-Indian hands.)

TERMINATION ACT -- An attempt to turn Indians into non-Indians

1953 House Concurrent Resolution No. 108 Termination Act

This Act made possible the "termination" of a tribe. Tribes that were deemed ready for termination were paid a per acre fee and the unique relationship between the tribe and the federal government was then ended. What tribes discovered was that the termination of the reservation meant the termination of federal benefits and services and also the termination of the tribe as an institution.

The Klamath tribe of Oregon was terminated. Each Klamath was to receive $43,000 on total termination of the reservation and sale of trust land and timber assets. Many Klamaths unschooled in the way of white finance and money management hocked their future $43,000 for a few thousand dollars in immediate cash. At the present time the effort to restore Klamath has begun.

The Menominee tribe is another tragic example of a disasterous effect of termination. Witnin a few years of termination the Menominees, a tribe formally paying for all of its own services, was reduced to having to sell lands to pay taxes. The hospital was closed and the infant mortality rate rose dramatically. At the time of termination the tribe had over ten million dollars in the federal treasury. By 1964, the fourteen percent of the county which was the former reservation area was receiving welfare payments. The ten million dollars had been paid out in per capita payments and there was no more tribal treasury. Menominee termination was repealed on December 22, 1973.

The disastrous effects of termination were soon clear to most tribes. As a result, few petitioned the United States for such action. PL 83-280 is seen as the next attempt of the U.S. government to end its responsibility to the Indian people for whom it had assumed wardship.

PUBLIC LAW 83-280 -- "A noose choking Indian tribes and the Indian way of life out of existence since 1953"

1953 Public Law 83-280

This Act gave to the various states the right to extend state jurisdiction to Indian reservations within their boundaries.

PL 280 allowed for the termination of federal law enforcement and the substitution of the laws of the state in which the reservation was located. Despite the vast increase in state law and order responsibility there were no funds appropriated with the bill. Lack of sufficient funds has often hampered the efficient provision of law enforcement. Counties that have large reservations within their borders are unable to provide sufficient personnel (the Yakima reservation was provided with 1-1/4 officers to cover an area of 1,366,505 acres and a population of 5,975.) Juvenile crime is seen by most of the tribes to be best adjudicated by the community yet in most cases the jurisdiction for juveniles under PL 280 rests with the state authorities.

PL 280...What does it authorize...What does it say

PL 83-280 was passed by the U.S. Congress August 15, 1953. This Act authorized the transference of civil

and criminal law enforcement jurisdiction from the federal government to the various states. (The concurrent tribal authority still remains the same.) The various states were divided into three categories.

Certain states were granted **mandatory assumption of jurisdiction.** These were:

1. **California**
2. **Minnesota**, except over the Red Lake Reservation
3. **Nebraska**, the Omaha tribe retroceded state jurisdiction
4. **Oregon,** except over the Warm Springs
5. **Wisconsin**
6. **Alaska,** upon reaching statehood, except for criminal jurisdiction on Metlakatla Indian community (1970).

States with constitutional disclaimers of jurisdiction over Indian tribes.

The following states, despite jurisdictional disclaimers over Indian reservations in both their enabling acts (by Congress) and their own constitutions, nevertheless assumed PL 280 jurisdiction:

1. **Arizona**, air and water pollution laws only
2. **Montana,** criminal jurisdiction over Flathead Indian tribe only.
3. **North Dakota**, civil jurisdiction over consenting tribes, no tribe has to date consented.
4. **Utah**, civil and criminal jurisdiction upon tribal consent.
5. **Washington**, civil and criminal jurisdiction in eight specific subject areas. Option for tribes to request total state jurisdiction.

States with no constitutional disclaimers.

1. **Florida**, civil and criminal jurisdiction.
2. **Idaho,** civil and criminal jurisdiction in seven areas.
3. **Nevada**, civil and criminal jurisdiction upon tribal request. (Nevada has since adopted a law providing retrocession of jurisdiction on all of its reservations, this is on a county by county basis.)

In 1968 the passage of PL 90-284 **The Indian Civil Rights Act** made the consent of the tribes mandatory for the assumption of further state jurisdiction.

On January 1975 PL 93-638 **Indian Self-determination and Educational Assistance Act** was passed by Congress. This Act recognizes the right of Indian tribes to manage their own affairs to the greatest possible extent and also stresses the need of tribes to exercise the principles of self-determination.

PL 280 is seen by many Indian people as the major stumbling block to empowerment and eventual self-sufficiency.

Over the years since the passage of PL 280 the Indian tribes have found the confusion of jurisdiction and the encroachment of the states into Indian reservations, has caused grave problems in the management of tribal affairs. State encroachment under the PL 280 authority includes zoning, pollution control, taxation, health and safety regulations, etc. Taxation encroachment has been halted due to the U.S. Supreme Court decision in **Bryan v. Itasca County, 1976**. In a 9-0 decision the Court found the PL 280 did not give states the right to tax Indian reservations.

RECENT INDIAN ACTION ON PL 280 -- S 2010
Indian Law Enforcement Act of 1975

The National Congress of American Indians met in Denver, February 1975 and resolved that PL 280 constituted a major threat to tribal sovereignty. As a result of the Denver meeting the tribes and their attorneys drafted legislation entitled "Indian Law Enforcement Improvement Act of 1975" to be known as S 2010. This bill was introduced June 25, 1975 by Senator Henry Jackson. Hearings on S 2010 took place December 3 and 4, 1975, before the Subcommittee on Indian Affairs of the Committee on Interior And Insular Affairs, United States Senate. Subsequent hearings were held March 4 and 5, 1976.

RETROCESSION...S 2010
A national Indian answer to PL 83-280

An analysis of S 2010 states:

The basic principle of S 2010, adopted by the National Conference of PL 83-280 is the principle of local option repeal of PL 83-280 That is that true self-determination of Indian people requires that each tribe determine for itself whether all or any measure of state jurisdiction should apply in the Indian country it controls and whether tribal jurisdiction should be current with state or federal jurisdiction.

On December 3, 1975, tribal leaders came to Washington D.C. to present testimony on the problems that have resulted from PL 83-280. They spoke of the need for a bill such as S 2010.

Mel Tonasket, President National Congress of American Indians, Councilman Colville Confederated Tribes:

I have been looking forward to this hearing for all of my adult life and I know that many of the other tribal leaders here, of far more experience than I, have been awaiting this hearing since 1953, the date of enactment of Public Law 83-280. Public Law 280 has been choking the Indian way of life out of existence since 1953.

Public Law 83-280 is an outgrowth of the termination philosophy of the early 1950's. Public Law 83-280 was not a termination bill, but was one act in a series of bills whose eventual design was termination. Public Law 83-280 was a law and order statute whose aim was merely the transfer to states of jurisdiction over civil and criminal causes of action on Indian reservations.

After 22 years, it is now conclusively proven that Public Law 83-280 is a total failure by an standard. And the termination philosophy which underlines Public Law 83-280 is defunct.

Joe DeLaCruz, President, Quinault Tribal Council, Taholah, Washington:

S 2010, which you have before you today, is a bill which is intended to place the Indian people back in a position where they can exercise their rightful authority to control the land and the people of their reservation as strong governments based upon clear legal jurisdiction over their territory and peoples. The legislation which took some of that power away, Public Law 83-280, adopted in 1953, has been the source of endless problems and suffering for the Indian people made subject to its provisions. I am sure that all here today agree that Public Law 83-280 was a misguided attempt to forcibly assimilate my people. The problem today is what to do about it. The answer of the Indian governments is S 2010.

Roger Jim, Yakima Tribal Councilman, Toppenish, Washington:

This bill represents the desires of the Indian people and should not be found to be objectionable by other interests. This bill's basic provision provides that those tribes placed under state jurisdiction, by a now discredited termination policy, will be returned to the same status as Indian tribes that missed the consequences of this termination policy. This bill is firmly within the policy of Congress and administration.

Roger Jim also spoke to the committee of the problems resulting from PL 280 and the confusion of jurisdiction on Indian Lands.

This breakdown is directly caused by the State assumption permitted under Public Law 83-280. The present system of a partial, checkerboard system of justice could not be worse no matter what system is devised. Congress owes the people, Indian and non-Indian, on the Yakima Reservation that action be taken to bring order out of this mess. The foundation of this mess is Public Law 83-280.

Odric Baker, La Courte Oreilles, Wisconsin:

The state and county judicial systems, its juvenile program as well as the foster children laws of the state demonstrate a deplorable and inhuman and callous disregard for Indian children. The doors of secrecy behind which minor tribal members are imprisoned constitute a serious violation of their civil rights inasmuch as it extinguishes the right to culture and family and in some cases disinherits them from lands and resources handled by probate courts. The failure of the state to license tribal governments in their work with foster children and juvenile delinquents results in the complete withholding of cooperation and information. Legal recognition and jurisdiction is considered very important. Because of Public Law 280, the State of Wisconsin is attempting to tax trust property of the tribe. In its efforts to tax, they have attached and confiscated tribal moneys held at our local bank.

Lucy Covington, Colville Tribal Councilwoman, and since Tribal Chairwomen, Nespelem, Washington.

Under Public Law 83-280, the State of Washington has attempted to assume jurisdiction over juveniles on the reservation. Indian children are constantly being taken from Indian homes and placed in foster care with non-Indians or placed for adoption with non-Indian families.

These children grow up with a sense of alienation from the culture surrounding them. Attempts by our tribal social services programs to deal with juvenile matters have met with opposition from the state which resists any efforts of our people to deal with these problems by ourselves. In addition, the existence of State Public Law 83-280 jurisdiction on our reservation has had bad effects in the area of criminal jurisdiction. The state asserts its jurisdiction over offenses on the reservation, but refuses to provide the manpower necessary to protect the residents of the reservation properly. As a result, the state has shown very little interest in protecting the personal and property rights of Indians, while at the same time proclaiming its jurisdiction over our lives.

In March 1976, the hearings on S 2010 were largely to determine the government position on the proposed legislation. The various states were given the opportunity to express their feelings on return of jurisdiction to the federal government and the Indian tribes. John Keeney, Deputy Assistant Attorney General Department of Justice had this to say on behalf of the Department of Justice:

We strongly support the concept of Indian tribes having the right to decide for themselves whether they are to be under state or federal jurisdiction, and that any requests for a return to federal jurisdiction should come from the tribes alone. We believe that the tribes, rather than the states, should be given the option, in an orderly fashion and with reasonable control by the Department of the Interior, to return to that criminal and civil jurisdiction which prevailed in Indian country prior to 1954 and the enactment of Public Law 280.

James Dolliver, Administrative Assistant to the Honorable Daniel J. Evans, Governor of the State of Washington:

Let me begin by saying it is the policy of the Governor in the State of Washington that we believe in retrocession. I think the record will show in our state that the Governor has at least in one instance granted retrocession to the Suquamish Port Madison Tribe. It was approved by the Secretary of the Interior. He was in the process of granting retrocession to other tribes who requested. Regrettably, someone asked the question of the Attorney General whether inherent executive authority rested in the Governor to do this. We assumed that it had, and the Attorney General, after much study, said that in fact it did not. We felt bound by the Attorney General's decision, but that does not lessen the Governor's support of retrocession. We feel that Indian persons are fully competent to conduct their affairs, and if retrocession is what they desire, we support it.

Statement of Jack Olsen, District Attorney, Umatilla County, Pendleton, Oregon:

Mr. Chairman, those very principles which we consider dear to the hearts of every American citizen, those very principles which served as the catalyst to the development of this great land -- liberty and the right of self-determination -- are in fact still being denied to that very group of Americans who first settled this continent. It is inconceivable to me that any nation should be denied the right to self-determination; and in fact, it is still being denied here. We espouse liberty, yet we deny liberty. It will be a sad day for America if this denial is perpetuated. Mr. Chairman, on a more practical vein it is essential that jurisdiction be returned, at least to the Confederated Tribes of the Umatilla Indian Reservation. Our county consists of over 3,200 square miles and our reservation is some 286,000 acres. With these vast areas state and county law enforcement simply cannot provide the protection it ought to be providing. This applies both to the Indian and to the non-Indian living on or passing through the reservation.

The State of Nebraska expressed opposition to retrocession. The major faction being the "checkerboarding" of Indian and Non-Indian lands and the consideration of loss of revenue to the state.

Ralph H. Gillan, Assistant Attorney General. State of Nebraska:

There is little or no question that, if this bill is passed, the Omaha and Winnebago Tribes, at least will ask for civil as well as criminal retrocession. The Winnebago Tribe has already asked for both criminal and civil retrocession, but this session of the Nebraska Legislature declined to adopt the resolution. Since the payment of state sales, income and cigarette taxes, and probably other taxes, is dependent upon the state having civil jurisdiction, there will, of course, be an almost irresistible incentive for the tribes to remove that jurisdiction. It is very possible that even the Santee Sioux will follow suit. The Santee Sioux Reservation is approximately 220 miles from Omaha, so the problems of going to federal court will be even greater for persons on that reservation.

(The question of state revenue gain through taxation has been settled with the 9-0 decision, June 1976 in Bryan v. Itasca County. The U.S. Supreme Court found the PL 83-280 does *not* grant any taxing jurisdiction to states.)

In the last decade the national policy towards Indian tribes and reservations has been stated as that of tribal self-determination. In 1968 PL 90-284 Indian Civil Rights Act made further state assumption of jurisdiction possible only upon tribal request.

SELF DETERMINATION AND TRIBAL SOVEREIGNTY

In 1975 PL 93-638 affirmed the principle of Indian self-determination.

July 1976, President Ford met with 200 Indian governmental leaders and pledged his support to the realization of the goal of self-determination for tribes and the reassertion of tribal jurisdiction over tribal lands.

Despite the many promises there has been minimal action to return jurisdiction over Indian lands to those most able to assert it -- the Indian people themselves.

Indian people, both individually and as tribes, are united in the desire to govern themselves. The destruction of the environment, the decay in the quality of life is seen by Native Americans to be the result of poor and thoughtless management and unacceptable values. It is safe to say that the U.S. treatment of both the environment and people of alien cultures has not been flawless. Too often expediency and lack of understanding have destroyed the best of both. Today, the Indian people are demanding the reassertion of their right to govern both their land and their people. A culture belongs to those who love and respect it -- only they can preserve the very best aspect for delight and strength of future generations.

WASHINGTON STATE UNDER PL 83 280

Washington State implemented the provisions of PL 83-280 by legislative action in 1957. In 1963 it amended and extended this Act. These two Acts have certain very important differences.

1957 SB 56. The assumption of PL 280 jurisdiction which became RCW 37.12.010. The terms of the 1957 Act show that the State of Washington was concerned for the sovereignty of the Indian tribes within its borders. a.) The Act could only go into effect on a reservation upon specific request by that tribe (this was later to become a requirement throughout the nation with the passage in 1968 of PL 90 284, the Indian Civil Rights Act); b.) No property was to involved; and, c.) Treaty hunting and fishing rights were precluded. There were, however, certain grave shortcomings in the Act. a.) No trial period was required in order for the tribe to determine the effects of state jurisdiction; b.) No method was included to allow for the retrocession of state jurisdiction should the tribe, or the state, so desire it.

Eleven tribes requested total state jurisdiction on their lands. **1. Chehalis, 2. Muckleshoot, 3. Nisqually, 4. Quileute, 5. Quinault, 6. Skokomish, 7. Squaxin Island, 8. Suquamish, 9. Tulalip, 10. Colville, 11. Swinhomish.** When the tribes requested state law enforcement they believed that they could obtain superior services, when they found that this was not the case they also found that the mechanism for the return of jurisdiction was nonexistent. Most of the reservations that requested state jurisdiction have since asked that it be returned to the federal and tribal authorities.

1963 TERMINATION LEGISLATION IN THE STATE OF WASHINGTON. EXTENSION OF JURISDICTION WITH NO TRIBAL CONSENT CLAUSE

The state legislature extended and amended the 1957 Act by asserting *total jurisdiction over all fee patent land, and partial jurisdiction over all land* (tribal trust, individual trust, alloted land and fee patent.) With no consent clause required, the legislature with one act ignored the concept of tribal sovereignty.

The partial jurisdiction asserted by the State of Washington consisted of eight subject areas. **1.) compulsory school attendance; 2.) public assistance; 3.) domestic relations; 4.) mental illness; 5.) adoption proceedings; 6.) juvenile delinquency; 7.) dependent children; 8.) operation of motor vehicles upon public streets.**

The obvious cultural implications of these eight areas was not lost on the tribes, numerous court cases were brought to obtain relief from what was seen as cultural strangulation.

The responsibility for Indian children was taken from tribal government and placed into the hands of a culture with entirely different standards in child raising. The extended family concept is not present in the dominant culture yet it is one that is both traditional and logical for tribes.

CHECKERBOARD JURISDICTION... The game of confusion in law enforcement.

Only the government that has jurisdiction has the legal right to exercise law enforcement. When a crime is committed on Indian land in the State of Washington it is necessary to determine which authority has the jurisdiction...the tribe, the federal government or the state and county government. The determination must often be made on the spot by a police officer; to do this certain facts must be established:

the status of the land,
the status of the crime,
the status of the persons involved.

a.) **The status of the land. Trust**, the jurisdiction on trust land rests with the federal authorities, the tribal authorities and in the eight subject areas with state and county authorities. **Fee Patent**: The jurisdiction belongs to the state authorities concurrent with the tribe. This fact is often ignored by the state.

b.) **The status of the crime.** Does the crime fall within the eight areas of jurisdiction assumed by the State in 1963? Does the crime belong under the thirteen major crimes under the jurisdiction of the federal authorities or is it under the jurisdiction of the tribal court?

c.) **The status of the persons involved**. Indian or non-Indian, juvenile or adult.

It is small wonder the state and county authorities are often reluctant to get involved in the confusion, the reluctance, however, leaves the Indian tribes with little or no protection, or as Roger Jim of the Yakima Nation describes it, "The reservation has the law, but no order." The tribes have been forced to provide law enforcement for their people at great expense and met with no recognition by the state of their having legal jurisdiction.

RETROCESSION...
First you see it, then you don't.

On January 11, 1971, the Suquamish Tribe of the Port Madison Reservation presented a resolution for retrocession August 26, 1971 and the Secretary of the Interior accepted the proclamation april 5, 1972.

The Quinault tribe believed that the original request for state jurisdiction (1958) was illegally obtained. Governor Evans voided state jurisdiction on the above grounds in 1965. In 1972 the State Attorney General was requested to present an opinion on the legal authority of the Governor of Washington to retrocede jurisdiction to an Indian reservation. The Attorney General's opinion (Wash. A.G.O. 1972, No. 9) noted that he could find no authority to retrocede partial jurisdiction over the eight subject areas assumed in 1963, neither did he find authority to retrocede jurisdiction which had been proclaimed by the Governor under either the 1957 or 1963 Acts pursuant to a petition by a particular tribe. The power of the Governor was confirmed to rescind a previous proclamation on discovery of error.

The result of this Attorney General's opinion has been to freeze state jurisdiction over tribes. At the present time the Ninth Circuit Court is considering the question of the legality of State of Washington assumption of jurisdiction by simple legislative action rather than constitutional amendment (1957) and the assumption of partial jurisdiction without consent of tribes (1963). The Yakima Nation v. Yakima County and State of Washington case incorporates the argument made by Quinault tribe in Quinault v. Gallagher (1966) and amicus briefs compiled by every tribe in the state. The legislation presently before the U.S. Senate S 2010, has the support of every tribe of the State of Washington. The tribes are united in their determination to reassert tribal jurisdiction over tribal lands.

BIBLIOGRAPHY

Books:

Uncommon Controversy: American Friends Service Committee. Seattle: University of Washington Press, 1970, reprinted 1975.

Justice and the American Indian: National American Indian Court Judges Association. Boulder Native American Rights Fund, 1974.

Law and the American Indian: Price, Monroe E. New York. Bobbs-Merrill Co., Inc. 1973.

Hearings, Reports, Law Review Articles.

Goldberg, Carole E. UCLA Law Review. Vol. 22. Number 3, February 1975.

Hearings before the Subcommittee on Indian affairs of the Committee on Interior and Insular Affairs, United States Senate. Ninety-Fourth Congress. First session of S 2010, December 3 and 4, 1975. Second session on S 2010 March 4 and 5, 1976.

Report of Indian Affairs Task Force: State of Washington.

Are You Listening Neighbor? State of Washington, 1971.

AMERICAN FRIENDS SERVICE COMMITTEE
PACIFIC NORTHWEST REGIONAL OFFICE
814 N.E. 40th Street
Seattle, Washington 98105

Cover design by
Tom Speer
Singing Whale Graphics
P.O. Box 21023
Seattle, Wa. 98111

Printed by UIATF Media Center
3604 W. Government Way Extension
Seattle, Washington 98199
Telephone (206) 285-4425